



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH THE CITY OF VIRGINIA BEACH VWP Permit No. 04-1239**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and City of Virginia Beach, for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "City" means the City of Virginia Beach.
7. "Regulation" means 9 VAC 25-210-10 *et seq.* - the Virginia Water Protection (VWP) Permit Regulation.

8. “Permit” means VWP Permit No. 04-1239, issued on December 14, 2004 and expires December 13, 2014.
9. “VAC” means Virginia Administrative Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The City of Virginia Beach has within its boundaries a neighborhood lake known as Lake Trant covering approximately 33 acres. Lake Trant provides beneficial uses including recreation and the conveyance of stormwater, and is generally within the City subdivisions of Trantwood Shores and Great Neck Estates (hereinafter referred to as “Lake Trant” or “the Lake”).
2. The City applied for and received the Permit to maintenance dredge Lake Trant to remove accumulated silt, which was impeding its ability to effectively convey and treat stormwater runoff. Lake Trant is a tributary to the Eastern Branch of the Lynnhaven River.
3. The Permit specifies the maximum depth to be dredged and operational conditions including minimizing impacts to surface waters and surrounding environment, implementing appropriate erosion and sedimentation controls, and monitoring and reporting of site activities during the dredge project. The Permit also includes a requirement for the City to compensate for 5,728 square feet (0.131 acres) of an estimated impact to nontidal emergent wetlands with a \$9,959.00 payment to the Virginia Aquatic Resources Trust Fund (VARTF).
4. The City’s dredging contractor started work on the Lake Trant project on June 10, 2005. On October 6, 2005 a Lake Trant lakeside resident complained to DEQ regarding the dredging project. DEQ staff responded with site inspections on October 6 and October 12, 2005.
5. The City provided DEQ with pre-dredge and post-dredge bathymetric survey results for Lake Trant on December 22, 2005. These surveys refer to cross sections of the Lake where depth measurements were recorded as “Alignments.”
6. During the site inspections conducted on October 6 and 12, 2005 and subsequent record reviews of the Lake Trant dredging project, DEQ documented the following Permit compliance deficiencies:
  - a. Unauthorized discharge of pollutants; placing unpermitted fill in sections of the Lake designated in the December 22, 2005 bathymetric survey as Alignments B, D, G, I, J, K. The unpermitted fill was shown in post-dredge survey measurements of Lake Trant as compared to pre-dredge survey measurements. According to the City, fill in the Alignments resulted from the use of a barge which was too large for the area being dredged. The sides and

- bottom of the barge scraped and pushed bottom sediment onto the Lake sides resulting in shallower depths in these areas. Part II, Section Q.4.a of the Permit prohibits the unpermitted placing of fill in a wetland.
- b. Unpermitted placement of dredged material, for later removal (“double handling”), on nontidal emergent wetlands in two areas; Alignment A and Alignment H. According to the City, the double handling resulted from the use of a barge which was too large for the Lake area being dredged. The contractor placed dredged material on the sides of the Lake in sections labeled as Alignment A and Alignment H while moving into the shallow and narrow areas of the Lake, then removed it on the way out in deeper water after dredging. Part I, Section F.4 of the Permit prohibits double handling of dredge materials.
  - c. Use of a barge to transport dredged materials that did not prevent overflow of dredged material into Lake Trant. Part I.F.8 of the permit requires that barges be filled in a manner to prevent overflow of dredge material into Lake Trant.
  - d. Unpermitted rinsing of dredge sediment from a barge into Lake Trant. Part I F.9 of the Permit requires that off-loading operations be conducted in a manner that prevents any discharge of liquids or solids to surface waters.
  - e. Failure to provide documentation to DEQ that the \$9,956.00 compensation payment had been made to the VARTF and to cease all work on the Lake Trant dredging project until such documentation was submitted to DEQ. Part I, Section D.12 of the Permit required that the City provide the compensation documentation to DEQ within 60 days of permit issuance or to cease work on the project. The documentation was due by February 11, 2005 and not received until November 28, 2005, 290 days late. According to DEQ files, work proceeded without this documentation being received by DEQ.
  - f. Failure to provide a construction monitoring report to DEQ within 30 days of the June 10, 2005 start of the dredging project. Part I, Section C.1 of the Permit requires the report to be submitted to DEQ within 30 days after start of the project. The report was due July 9, 2005 and received by DEQ September 26, 2005, 81 days late.
  - g. Failure to notify DEQ of a fish kill that occurred within Lake Trant during the dredging project as required by Part I, Section D.4 of the Permit. According to the construction monitoring report submitted September 26, 2005, a fish kill occurred in Alignment G on August 17, 2005. The City reported the fish kill 41 days late; the report was due September 15, 2005.
  - h. Failure to install erosion and sedimentation controls at the dredge staging/off loading site immediately adjacent to surface waters. Part I, Section B.10 9 the Permit requires the installation of erosion and sedimentation controls to prevent loose soils from entering surface waters of Lake Trant.
7. The City violated Permit conditions Part I.B.10, B.14, C.1, D.4, D.12, F.2, F. 4, F.8, and F.9, and Part II.Q.4.a as noted in Item #4 above.
8. DEQ advised the City of the above referenced findings and applicable Permit citations by Notices of Violations No. W2005-11-T-0001 dated November 17, 2005 and No. W2006-01-T-0002 dated January 27, 2006.

**SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders the City, and the City voluntarily agrees, to pay a civil charge of \$30,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include the City's Federal Identification Number and shall reference that it is being made as a requirement of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, VA 23240

2. The City shall comply with the terms and conditions specified in VWP Permit No. 04-1239.
3. The City agrees to provide DEQ within 30 days of the effective date of this Order, an approvable plan to address areas of unpermitted fill in sections of the Lake as noted in Section C.6.a. and b. of this Order. Within 30 days of DEQ plan approval, the City shall implement the plan.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the City, for good cause shown by the City, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above-cited Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order and subsequent actions with respect to this Order, the City admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The City consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The City declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the City intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City. Notwithstanding the foregoing, the City agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, the City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 2, 2006.

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director for  
David K. Paylor, Director  
Department of Environmental Quality

The City of Virginia Beach voluntarily agrees to the issuance of this Order.

By: Charles W. Meyer

Date: 27 Mar 06

Commonwealth of Virginia

City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of  
MARCH, 2006, by CHARLES W. MEYER, who is  
name

CHIEF OPERATING OFFICER of the City of Virginia Beach, on behalf of the City.  
title

Kristi L. Strauhand  
Notary Public

My commission expires: 04/30/06